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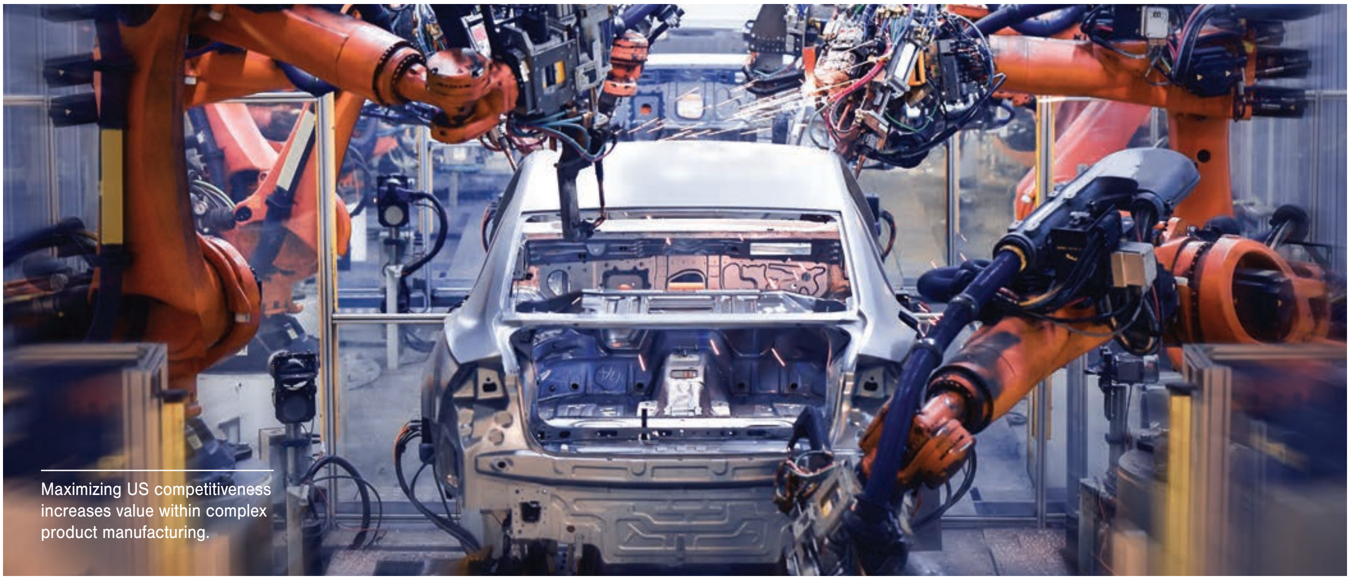

Maximizing US competitiveness increases value within complex product manufacturing.

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Cutting-edge tool

FTZ program sharpens US competitiveness

By Lewis Leibowitz

FOREIGN-TRADE ZONES (FTZs) are the US version of a concept that goes back to the ancient world. Carthage, Rome, Greece, and other early civilizations recognized something that is still true today: tariffs can be applied in unfair and illogical ways.

In 1934, in the midst of the Great Depression, Congress first passed a foreign-trade zone law. It did not initially permit the new zones to engage in manufacturing, but it did permit "manipulation." The difference between the two became very controversial, because "manipulation" as well as "manufacturing" can result in a change in tariff classification of products and therefore raise or lower duties. As a result, Congress amended the Act in 1950 to permit zone-based companies to engage in manufacturing.

The result by the 1970s was an explosion of manufacturing in FTZs. These zones permitted US companies to make goods that competed with imported products: if a finished automobile was taxed at a rate of 2.5 percent, our national interest did not dictate that US-produced automobiles be taxed at a higher rate because certain auto parts (such as engines and transmissions) had a higher duty rate than 2.5 percent.

Some domestic manufacturers opposed the idea of US-based companies receiving a tariff break that made imported parts more competitive. They argued in Congress and sometimes in the courts that FTZs knocked a "hole" in the US "tariff wall." However, with some exceptions, government policy has permitted zones where the "tariff wall" was a barrier to US companies needing to compete globally, not only to produce goods now but to make the next model and locate the next factory to make them. The choice is often not whether to buy imported parts as opposed to US-made parts; in the globalized world, the real choice is increasingly whether to import parts or finished products. Imported products are much less likely to include US parts than those manufactured domestically. In industries such as petroleum, motor vehicles, electronics, and pharmaceuticals these considerations trump traditional notions of tariffs.

This argument still crops up from some quarters, but the foreign-trade zones community knows that the way to manufacture complex products with many parts is to maximize the competitiveness of

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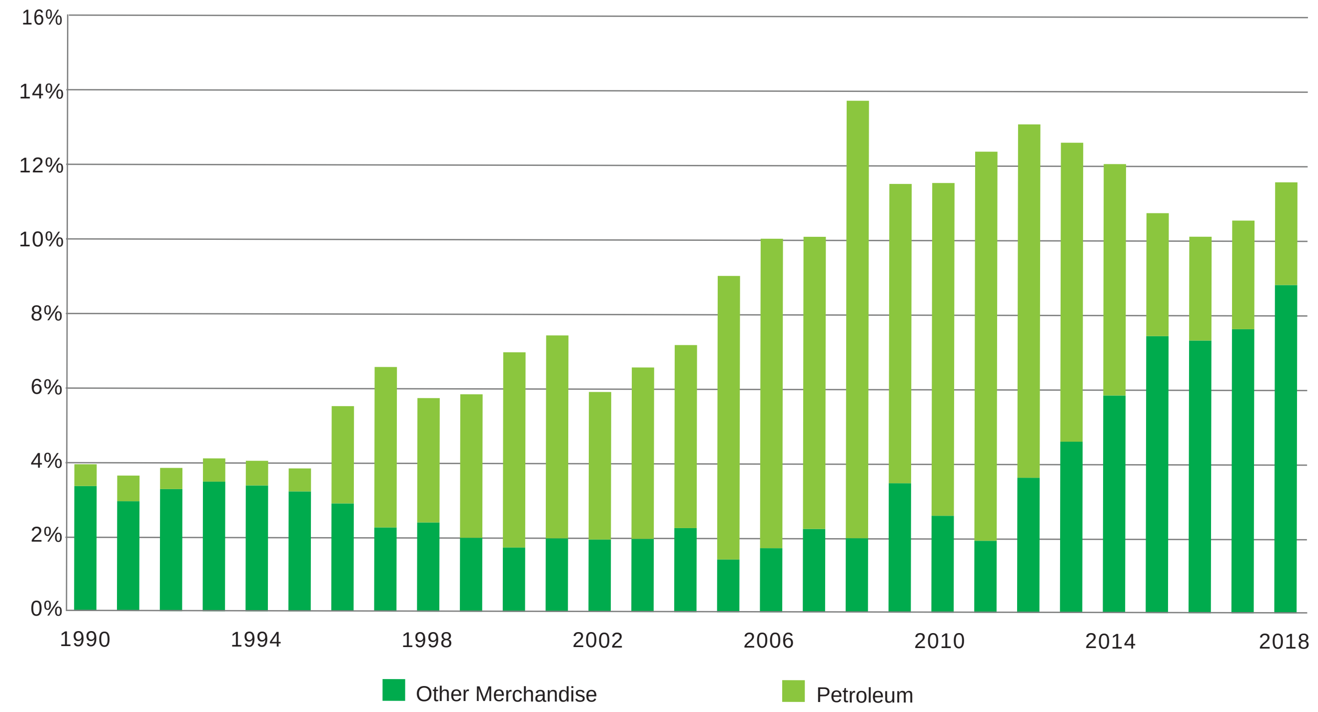
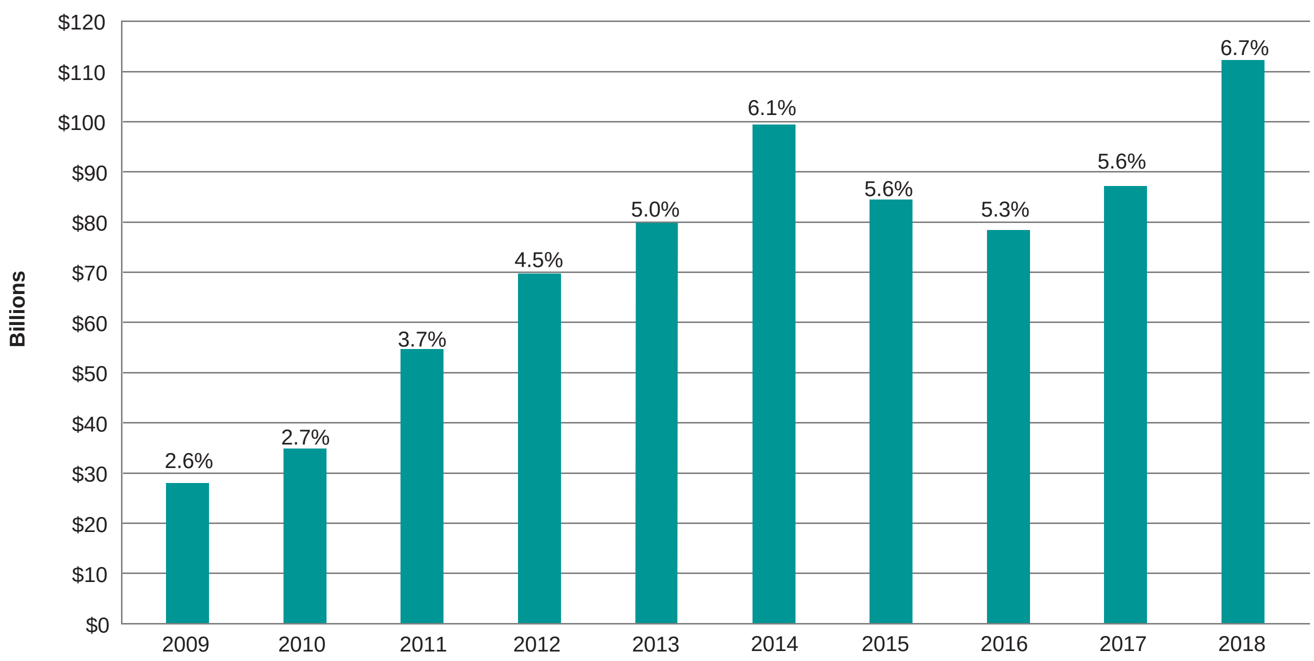
FOREIGN-TRADE ZONES

Total FTZ imports as a share of total US goods imports, 1990-2018



Sources: FTZ Board Annual Reports and US Census Bureau.

Total FTZ exports as a percentage of total US exports, 2009-18



Sources: FTZ Board Annual Reports and US Census Bureau.

FOREIGN-TRADE ZONES

a US location. Foreign-trade zones are one of the most important ways to accomplish this and thereby create more American manufacturing jobs.

Tariffs, of course, are taxes paid by American consumers. As most economists know, if the government taxes an activity, it is likely to get less of it. Foreign-trade zones operate in all 50 states. The volume of business through foreign-trade zones is greater than most Americans know. For example, in 2018 (the most recent year for which statistics are available) consumption entries from FTZs totaled nearly 12 percent of total imports for consumption nationwide. More than 440,000 workers are employed in zones (not including non-zone domestic installations that deliver goods into foreign trade zones). Approximately $793 billion of merchandise entered FTZs in 2018, of which 63 percent ($127 billion) was domestic.

While a wide variety of industries, including pharmaceuticals, utilize FTZs, the three largest zone-based manufacturing industries are petroleum, motor vehicles, and electronics. The value decline of crude oil has driven zone-based production of petroleum down, but it still remains in first place.

Approximately $793 billion of merchandise entered FTZs in 2018, of which 63 percent was domestic.

Manufacturing (known in FTZ parlance as "production") activity is not the only way that businesses can reduce their taxes. Distribution from foreign-trade zones can save money, too. Reducing these expenses can mean the difference between a company locating a fulfillment or distribution center in the United States rather than in a foreign country.

Zones also account for an outsized portion of US merchandise exports. In 2018, exports directly from zones totaled $112 billion, or 6.7 percent of total merchandise exports. That's not bad for 440,000 workers, which is a bit less than 3 percent of non-farm employment in 2018. Zones accounted for nearly twice the value of exports per worker than non-zone employees.

Foreign-trade zones are an important part of the competitive US economy in the 21st century. The new US-Mexico-Canada Agreement, and its related legislation, will encourage businesses to locate in North America, and the US specifically, as long as unnecessary and illogical restrictions are not placed on FTZ activity. As a former chairman of the National Association of Foreign-Trade Zones (NAFTZ), I saw significant attempts to impose ill-considered restrictions; some have been successful, and the NAFTZ continues to work to relieve zone-based companies from burdens they should not have to bear. In addition, the association is working to increase competitiveness for US firms by proposing new FTZ benefits, such as allowing US zones to handle de minimis entries on an equivalent basis with non-US distribution centers.

The NAFTZ will vigorously work to make zones a cutting-edge tool to increase US-based activity and employment for years to come. ■

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With a keen eye toward building a successful and sustainable future, the port is completing two major long-term capital improvement projects — the world's most advanced container terminal and a new bridge built for the modern era of shipping and goods movement. That's in addition to deeper channels, rail projects, taller cranes, and other improvements.

In the next 10 years, the port is planning $1.7 billion in modernization projects to further prepare for the demands of global trade. Plans include investing $1 billion in on-dock rail projects over the next 10 years, aimed at substantially increasing reliability, adding capacity, strengthening our competitiveness, improving speed-to-market, and allowing for the rapid movement of cargo throughout the harbor.

By operating Foreign Trade Zone No. 50, the Port of Long Beach lessens the impacts of tariffs and eliminates customs clearance delays by having shipments delivered directly to qualifying businesses within Orange County and parts of San Bernardino and Los Angeles counties.

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FOREIGN-TRADE ZONES

Engine for growth, recovery

By James Grogan, Shane Williams, and Torrey Chambliss

FOREIGN-TRADE ZONE (FTZ) usage in the US has experienced significant and steady growth over the past 20 years. The total value of all foreign and domestic merchandise received into zones has risen substantially, from $157 billion in 1998 to $793 billion in 2018. Imports into FTZs represent nearly 12 percent of all US import value. Meanwhile, exports from FTZs have similarly grown from less than $20 billion in 1998 to $113 billion in 2018, representing 6.7 percent of total US exports. This signifies a five-fold increase in both directional categories of international trade. Procedurally, the number of cases handled by the Foreign-Trade Zone Board (such as new geographic applications) has grown from just over 100 in 2010 to more than 250 in 2019 (approximately one case for every workday of the year). Today, over 3,300 US companies use the Foreign-Trade Zone program.

There are many potential drivers for the increased usage. One recent reason relates to the cascading series of punitive tariffs imposed by the United States. Since early 2018, importers have seen new and steep import tariffs on solar panels and washing machines (Section 201), articles of steel and aluminum (Section 232), new antidumping/countervailing duty orders on a variety of products, and of course the heavy punitive tariffs on Chinese-origin items (Section 301). As a result, US importers are scrambling to understand every duty-relief mechanism available, including the 86-year-old Foreign-Trade Zone program.

As many know, FTZs offer deferred payment of duty on products that will remain in the United States; elimination of duty on re-exports; duty reduction on inverted tariff manufacturing scenarios; duty reduction/elimination on scrap or waste generated during US manufacturing; and a variety of other tax, fee, and supply chain benefits. FTZs also offer tremendous flexibility when overlaying other preferential trade regimes, such as free trade agreements, and particularly when new tariffs are imposed.

Aside from the new tariff landscape, access to the program's benefits has also become more streamlined, thanks to the Alternative Site Framework (ASF) — proposed in 2008 and currently taken advantage of by nearly all zone grantees — and other significant regulatory modifications made in 2012. These changes have afforded grantees much more flexibility in marketing their geographic service areas as "FTZ ready" and have opened access for new applicants (operators/users) to be approved by the Foreign-Trade Zone Board on an accelerated basis, often as quickly as 30 days.

We note that supply chain-convenient footprints and well-established trade infrastructure are paramount to a company's success. In most countries with similar free ports or free-trade zone programs, companies seeking FTZ benefits are often forced to design their supply chain around the approved geography and existing infrastructure of the country's FTZs, such as within traditional maritime ports or industrial complexes, if they want to take advantage of the tax and duty benefits.

However, for companies in the US, the program offers a unique opportunity to establish FTZ designation at more inland and/or remote locations, away from the traditional maritime ports and industrial complexes that

NEW FTZ DESIGNATION, SERVICE EXPERTISE IN JACKSONVILLE

SHORESIDE LOGISTICS IS a Jacksonville, Florida-based trucking and logistics company that recently added foreign-trade zone (FTZ) services to its business. Shoreside operates 100,000 square feet of warehouse space about 5 miles from Jacksonville Port Authority and has been part of the Jacksonville supply chain since 2002. Its services also include drayage, warehousing, consolidation, intermodal transportation, customs brokerage, and the Central Examination Station contract for the local US Customs and Border Protection Port of Jacksonville. Becoming an FTZ site is a natural fit and a benefit to the Jacksonville community as a whole.

"We're pleased to provide our customers with the many cost-saving benefits that operating under an FTZ offers," said Shoreside Logistics President Tim Nelson. "From import duty reduction, deferral, and even elimination — our FTZ designation helps improve cash flow for our customers, which is especially helpful during this time of economic uncertainty."

To help grow Shoreside's FTZ business, the company recently hired Lisa Diaz, who spent many years as JAXPORT's foreign-trade zone manager and is known in the region as an FTZ expert. Diaz joined Shoreside as vice president of regulatory and compliance services.

"I'm able to share these years of experience with customers helping them save money and find hidden efficiencies while being compliant within their supply chains," said Diaz. "I also expect Shoreside's FTZ service will help attract more cargo to JAXPORT, which means more jobs and economic opportunity for Northeast Florida."

Diaz provides free, cost-savings analyses to customers as well as guidance on other FTZ benefits. ■

For more information on Shoreside's FTZ service, visit: www.shoresidelogistics.com/foreign-trade-zone

SHORESIDE
LOGISTICS

dominate zone usage abroad. When combined with the efficient inland transportation system of the US (rail, pipeline, highway, etc.), a company can design a resourceful supply chain strategy and simultaneously enjoy the benefits of the program in more remote locations. For example, the five newest FTZs (new grantees) were approved in areas of the country away from major port facilities: Jefferson County, Colorado; Lufkin, Texas; Vancouver, Washington; Central Pennsylvania; and Western Kentucky.

Since grantees come in many flavors, new FTZs are still possible in less-developed areas of the United States, provided that the port of entry doesn't already have an FTZ — or if the existing zone(s) do not adequately serve the convenience of commerce — and the new grantee meets the 60-mile or 90-minute-drivetime "adjacency" requirement. As shown through recent applications, this structure can help level one piece of the economic playing field between smaller, developing international trade markets and major ports of entry. Given the broad coverage of FTZ designation across the US, it's now a competitive disadvantage not to have the designation.


The Port of Brownsville

Nevertheless, FTZ infrastructure is only one of many factors driving choices of supply chain flow and location investment. Tangible infrastructure (e.g., availability of covered storage, temperature-controlled storage, FDA-registered facilities, unused acreage, etc.) and intangible infrastructure (e.g., established security protocols and local customs knowledge) still play a significant role in site selection and trade planning. At times, these types of facilities are only available at certain locations within a community, such as at major seaports, airports, or industrial parks.

Grantees and economic developers will continue using the FTZ program as an important tool for economic recovery, for both reshoring business that may have left previously and landing inbound investment. As evidenced by continued growth and new grantee applications, the program also allows developing markets to remain competitive with their major port counterparts. ■

James Grogan is a senior manager within EY's Global Trade practice. Shane Williams is the director for economic development at Port Houston. Torrey Chambliss is the director of FTZ and cargo business development for Port Tampa Bay.

FOREIGN-TRADE ZONES

Foreign-trade zones offer duty deferral on products that will remain in the United States.

The Port of Brownsville

Critical impact

Public policy and the FTZs

By Erik Autor

THE CURRENT TRADE-POLICY environment has impacted many industries, and the US Foreign-Trade Zone (FTZ) program and stakeholders are no exception. There are three trade challenges specific to US foreign-trade zones that are having a critical impact on the program — the application and administration of trade-action duties, such as Sec. 301, to FTZs; the status of North American Free Trade Agreement (NAFTA) restrictions on zones under the new US-Mexico-Canada Agreement (USMCA); and the expansion of de minimis entry procedures under Sec. 321 (19 USC §1321) to products withdrawn from FTZs.

Since the onslaught of the Trump tariffs, two serious problems have emerged in the way duties under various trade actions (Sections 201, 232, 301, etc.) are administered and assessed on US-based manufacturers located inside an FTZ versus those outside of one. The first problem arose in Sec. 201 and Sec. 301 trade cases where the unique country-of-origin reporting requirements for entries from an FTZ resulted, in some instances, in products manufactured in a US zone unintentionally being treated as an imported article and improperly assessed trade-action duties on the value of all foreign inputs incorporated into that article, including inputs not from a subject country and/or not on the list of targeted subject merchandise. A presidential proclamation corrected the problem in the Sec. 232 cases on steel and aluminum, but it persists in other trade actions — particularly the Sec. 301 case on products from China.

The second problem is the inconsistent and conflicting ways trade-action duties are being applied to imported subject merchandise admitted into an FTZ in "privileged-foreign" (PF) status, which flags that merchandise for collection of those duties upon withdrawal and entry from a zone. Specifically, it is often unclear what duty rate applies when the rate changes or is terminated while the merchandise is in an FTZ and not yet entered for consumption. Is it the rate in effect on admission into or on entry from the zone that governs in that situation? After many attempts to correct these problems administratively, the National Association of Foreign-Trade Zones (NAFTZ) has crafted a legislative solution in a draft bill called the "FTZs for America Act," which will not provide any means for zones to avoid payment of such duties, but rather will merely clarify how those duties are assessed on FTZ merchandise.

Negotiation of the US-Mexico-Canada Agreement provided a unique opportunity to change two unfair and discriminatory NAFTA restrictions on foreign-trade zones. The first of these was in the NAFTA Implementation Act and prohibited application of the rules of origin and duty benefits for FTZ-manufactured products sold in the US market. The second, thornier problem was the NAFTA provision, carried over into the USMCA, requiring products manufactured in a US FTZ to file a US entry and pay any applicable US duties before exportation to Canada or Mexico. Both of these restrictions undermined the core duty benefits and objectives of the Foreign-Trade Zone program and severely impacted the cost-competitiveness in the North American market of US-based manufacturers, both inside and outside foreign-trade zones. The cost-competitiveness imbalance was exacerbated by export-promotion programs implemented by Canada and Mexico after NAFTA came into effect as well as those countries' extensive network of free-trade agreements, which largely eliminated domestic duties for their manufacturers.

By repealing the NAFTA Implementation Act, the USMCA Implementation Act also eliminated the FTZ rule-of-origin restriction. The US Trade Representative (USTR) now claims this change was an oversight and wants to restore the restriction through a technical correction, claiming it is necessary to restore the original NAFTA status quo and support the use of more originating North American production content. However, this argument fails to consider that changes in the Canadian and Mexican tariff regimes significantly altered the original status quo in the early 1990s and eligibility to use the USMCA rules of origin would incent FTZ manufacturers to incorporate more US and North American content in their production than they might otherwise use. As to the FTZ export restriction, NAFTZ has developed a proposal to study its adverse impact on the competitiveness

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of US manufacturers and ways it might be addressed and mitigated. The bottom line is that successful resolution of these two issues will determine whether companies decide to manufacture parts and finished articles in the US or in Canada and Mexico where they get full access to the US and North American markets under better duty treatment and conditions than they currently get in the United States.

Under Section 321, shipments with a de minimis retail value of $800 or less may enter the US duty free if imported by one person on one day.

Under Section 321, shipments with a de minimis retail value of $800 or less may enter the United States duty free if imported by one person on one day. With the surge in e-commerce and small-package delivery, companies with distribution operations outside the United States quickly expanded their use of the Sec. 321 customs-entry process to export qualifying shipments duty free to the US market. However, FTZs in the United States are unable to use the provision when entering imported goods for domestic consumption that otherwise meet de minimis entry requirements and must pay any applicable duty because US Customs and Border Protection does not consider withdrawal and entry of goods from an FTZ to be an "importation."

This situation seriously jeopardizes US-based distribution operations and jobs, particularly in the important area of e-commerce fulfilment, as companies can realize significant cost savings by serving the US market from a foreign location. NAFTZ supports a legislative solution to expand Sec. 321 to include goods meeting the de minimis threshold withdrawn and entered from a US FTZ on one invoice or order, per ultimate consignee, on one day, which maintains the integrity of the de minimis concept.

Unfortunately, other political issues have delayed action on this proposal, including disagreement over where the de minimis value threshold should be set. NAFTZ is neutral on this point, seeking only to ensure that whatever the value, the de minimis entry option is available to US FTZs and not just foreign exporters.

A second challenge arises from concerns that expansion of Sec. 321 to include FTZs will substantially increase de minimis shipments, harming small retailers and increasing the risk of illicit goods entering the US market. However, closer examination shows that the proposed changes would not affect the number of de minimis shipments coming into the United States; rather, they will shift more trade from foreign distributors to US-based FTZ distributors.

A final challenge is the Trump administration's desire to eliminate the de minimis system entirely over concerns that it creates a loophole for Chinese products to evade US duties, as well as the opportunity for illicit goods to enter the American market. However, the Foreign Trade Zone program's rules and procedures can help address and mitigate these concerns. The Commercial Customs Operations Advisory Committee (COAC) is of the view that amending Sec. 321 to allow more of that trade to funnel through the tightly regulated and highly compliant US foreign-trade zone system will lower the risk of illicit trade entering the US market. FTZ program rules and regulations also foreclose the possibility of evading trade-remedy duties, such as Sec. 301, by requiring that subject merchandise be flagged in PF status when admitted into a zone for collection of those duties upon its withdrawal and entry from an FTZ — either in its original form or as part of a finished article.

These proposals to address these challenging trade issues are critical to ensure the future value and viability of the US FTZ program and to advance the core goals of the program — promoting the location of manufacturing and distribution operations in the United States, creating and supporting American jobs, encouraging economic investment in US communities, and facilitating US exports. ■

Erik Autor is president of the National Association of Foreign-Trade Zones in Washington, DC.


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Trade tumult

Control in a shifting landscape

By Shannon Fura and Jeremy Page

INTERNATIONAL TRADE HAS been a perpetually moving target of late, causing the trade-compliance community many a sleep-deprived night. From visions of Section 232 and Section 301 to US-Mexico-Canada Agreement (USMCA) implementation to enhanced (oftentimes immediate) export controls, increased day-to-day enforcement and confrontation with all things China, it seems that hardly a day goes by where there isn't a new or emerging issue that requires oversight and management.

The US Foreign-Trade Zones (FTZ) program has not been immune to these developments. Although FTZs are considered to be outside of US customs territory, the reach of the law is expansive, requiring zone users and operators to remain vigilant and determine the extent to which the actions of the Trump administration may impact their day-to-day activities.

How do we stay engaged, and what can we anticipate over the course of the next several months? If there is one constant refrain, it is that reliable information is king. Today, there are innumerable channels of information, and separating the wheat from the chaff is not always easy. Fortunately, through the work of the National Association of Foreign-Trade Zones (NAFTZ) and other avenues, compliance professionals are provided with timely, critical information to support their trade obligations.

Following are some of the top considerations as we transition into the upcoming election cycle: more pressure on China, increased guidance on export controls, USMCA engagement, the shifting landscape of global trade, and increased agency enforcement by US Customs and Border Protection (CBP) and others.

If there has been a "winning ticket" from a trade perspective, it has been the aggressive stance adopted by the Trump administration where it comes to China. Although the harm occasioned by the administration's posture is not without criticism and adverse impact, the pressure on US-China bilateral trade relations is likely to persist in light of the economic doldrums and the continued delays in China's execution of its Phase 1 purchasing commitments. Indeed, if anything, the administration is finding new ways to disengage with China, including the use of more-restrictive immigration and investment/divestiture policies.

As with other participants, operators and users in the FTZ space find themselves in the crosshairs of the US-China dispute as the policies adopted by the administration and implemented by the governing agencies impact trade running through the zones in the same manner. Continued vigilance regarding China enforcement, therefore, is essential for all US trading partners.

Will things change if a new administration moves into the White House as a result of the upcoming election? Almost invariably no, as the presumptive Democratic nominee, Joe Biden, has also challenged China, particularly in the area of human rights. Having said that, it seems likely that the tools used to "encourage" change may be revised. Whereas President Donald Trump's policy has mostly been either unilateral or threatening in nature, a Biden presidency would likely seek a more collaborative, multilateral approach to engagement. One

PLAYING A PIVOTAL ROLE IN NORTH AMERICAN TRADE

THE PORT OF Brownsville's proximity to Mexico uniquely positions the port to serve as the key transshipment gateway delivering goods and materials to nearby multinational manufacturing centers on both sides of the border. This has led the port to rank among the leading US steel ports, moving more steel into Mexico than any other domestic competitor. In 2019, the port moved 3.2 million short tons of steel across the southern border.

In addition to growing exports of steel, recently implemented Mexican oil reforms are contributing to the uptick of cargo crossing the border. Ultra-low sulfur diesel, premium gasoline, and specialty lubricants make the trip southbound with increasing volumes and frequencies. Fuel imports, like No. 6 fuel, travel northbound by unimpeded rail crossings to the port as well.

These increases firmly entrench the port's foreign-trade zone as a consistent leader among its peers. In the latest report to Congress, FTZ No. 62 ranked third for the value of exported goods out of 293 foreign trade zones in the United States, reaching $4.3 billion for the reporting period. In turn, the FTZ received $4.6 billion in imports. These numbers, the highest in the zone's history, saw products in the petroleum industry and shipbuilding equipment bring the most value, supported by the steady transport of steel, aluminum and wind energy products.

For the fiscal period ending Dec. 31, 2019, the port set new bars of success with 11.8 million short tons of total cargo and more than $25 million in total operating revenue.

According to a Martin Associates' report, cargo activity at the port's marine terminals and rig repair operations support $3 billion in total Texas economic results, creating more than 51,000 jobs. Of those, 8,500 local and regional direct, indirect, and induced jobs are generated at the port by marine cargo vessel activity and ship and rig repair. Those jobs infuse more than $2.6 billion into the regional economy annually. These impacts distinguish the port as the region's leading economic driver. ■

PORT OF BROWNSVILLE
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FOREIGN-TRADE ZONES

aspect of this change could be an effort to re-engage in multilateral trade negotiations, including finding the means to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which was the alternative agreement established among the remaining 11 signatories when the Trump administration abandoned the Trans-Pacific Partnership (TPP) early in its tenure. Intended as a means of ensuring continued US engagement throughout Southeast Asia, given the aggressive actions taken by China, this agreement has perhaps never been more important.

Sabers continue to be rattled by the Trump administration, challenging perceived inequitable actions taken by our trading partners.

The export agencies have not proven shy in taking action against those countries, entities, and individuals viewed as a national security or other risk to US interests, and we can expect that trajectory to continue into the foreseeable future. Whether that involves continued targeting of China, Venezuela, Russia, and Iran, or additional acts against either other countries, entities, or individuals, in either event, the investigatory and enforcement tools available to the export agencies have been enhanced with the implementation of the Export Control Reform Act.

In addition to this consideration, long-promised details regarding those emerging and/or foundational technologies likely to be subject to export controls is also anticipated. To date, the actions taken on export have been extremely narrow in scope, reflecting the overall challenge in crafting controls that do not unnecessarily hamper legitimate trade and technological advancement. Regardless of how manifested, however, attention must be paid to the export agencies to understand how any such changes might impact cross-border trade and/or investment.

The US-Mexico-Canada Agreement is now the law of the land, but the ink is still drying, and there will invariably be many growing pains as the requirements for qualification and compliance are integrated into companies' daily operations. CBP has formally implemented a six-month "informed compliance" period during which it is taking a more-relaxed approach to compliance, although what that actually means in practice remains to be seen. What importers, exporters, and producers (as well as those involved in domestic transactions in between) might consider a "reasonable" approach to USMCA implementation will likely differ from CBP expectations.

If the experience under NAFTA is any guide, we can expect all three customs administrations to begin to ramp up their audit programs through USMCA's verification process. While the COVID-19 pandemic will invariably curtail the ability to hold on-site verifications, written inquiries seeking detailed information on applicable rules of origin, product and component classification, supplier certifications, production processes, and costs of production and/or acquisition will be required. Developing a strong recordkeeping and transactional tracing program now will help alleviate the risk of future enforcement.

Zones are no exception where these restrictions are concerned as the continuation of duty deferral restrictions means the on-going limitation of inverted tariff benefits where cross-border shipments among the USMCA countries are concerned. In addition, the restraints imposed under Section 232 and Section 301 – impacting zone operations where finished goods are subsequently imported for either domestic consumption or consumption within Canada and Mexico – remain.

Sabers continue to be rattled by the Trump administration, challenging perceived inequitable actions taken by our trading partners. Whether through the continued use of Section 301 and its premised threat to national security; executive action taken against countries, entities, or individuals based on identified acts violative of economic or human rights; or other blunt instruments found in its toolkit, the administration's aggressive policy adopted on the global stage is likely to continue unabated through year end. Even the World Trade Organization (WTO), in its current weakened state, has proven a ready foil to the administration's posture where global trade is concerned.

If any one approach is likely to vary with a change in leadership, it would be multilateral engagement as noted above. A Biden administration is likely to seek to partner rather than isolate our trading partners by striving for more of a negotiated or collaborative resolution to pending disputes. The WTO – in whatever revamped state – would also likely be reinvigorated given the necessary role it can play in facilitating global trade. At the same time, the current administration's stated preference for negotiation of bilateral trade agreements, such as those initiated with the United Kingdom and Kenya, will remain in place, regardless of whether a change in the White House occurs.

Although CBP has announced a period of leniency for USMCA implementation, that relaxed state does not apply to other areas of legal or regulatory compliance. Increased identification and enforcement in the areas of forced labor, intellectual property, and general import issues remains at the forefront of CBP's mandate. In addition, with the migration of Electronic Export Information reporting through the Automated Commercial Environment (ACE), CBP continues to ramp up its review of export filings and the issuance of penalties for even relatively innocuous reporting errors. Finally, continued concerns over transshipment as well as questions surrounding the adequacy of shifts in production are reinforcing CBP's focus on Chinese sourcing practices.

Other agencies are being brought into the mix, as the increased visibility occasioned through the migration to ACE for import filing has allowed those agencies to more stringently control qualification and reporting requirements. Although many of those agencies do not have their own enforcement mechanism, through partnership with CBP, goods subject to such Participating Government Agency control can be subject to inquiry, detention, seizure, or even forfeiture where the facts so warrant.

All in all, it sounds like many more sleepless nights lie ahead. ■

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